

Questions and Answers/March 4, 2010, Webinar

1. Please explain when a reevaluation waiver form (for the required three-year reevaluation) needs to be used and when the review of existing data form is used. There seems to be some confusion regarding when to conduct a reevaluation and when it would be appropriate to use the triennial waiver form.

Answer: Remember that a reevaluation is the process of determining continued eligibility for special education and the gathering of information so the IEP team can develop an appropriate IEP for the student with a disability – and that a review of existing data is the first step in the evaluation process where a group of individuals meeting the requirements of an IEP team met or confer to determine areas of concern/areas where further assessment(s) are needed.

Things to keep in mind:

- If a triennial waiver form is used because the parent and LEA determined that a reevaluation is not necessary. The review of existing data (RED) form does not need to be completed.
 - If the team does a review of existing data as part of a reevaluation the team's conclusions and decisions would be documented on the RED form. If sufficient information exists to make the decision that the current eligibility category continues to be appropriate and they can write an appropriate IEP from that information the parent would be notified using the "parent notification regarding results of the RED documentation form." Please remember, at this point the triennial waiver form does not have to be completed because you have completed a reevaluation without additional assessment.
 - If there is any need for the team to meet then they should go ahead and conduct a RED. If you use our RED model form the team's conclusions and decisions page guides you through the steps you need to take.
 - You don't use the RED form to determine that you are going to use the triennial waiver form because the RED is part of the reevaluation process.
2. How do we write the Notice of Action when we have done a review of existing data and determined that no further assessments are necessary to determine that, at this time, we do not suspect the student to have a disability that requires specialized instruction? Do we say that the student is ineligible for services or do we say that we have refused to evaluate? Once we have done the review of existing data, haven't we started an evaluation but have determined on the basis of the reviewed information that we do not need to do further assessments to determine that the child is not in need of special services?

Answer: The person is asking what to say in the Notice of Action Refused, when a child is referred for evaluation and the district feels there is no reason to suspect a disability and therefore is refusing to evaluate.

The person is concerned about whether making the decision to not evaluate, is actually "evaluation" and suggests that this decision is being made by "reviewing existing data" and is therefore already an evaluation.

I can see her point; and yet, clearly it is NOT an evaluation. In such a case, the fact that you may be reviewing data that already exists, but looking at the kid's files and talking to staff, does not make it the formal "review of existing data" stage of the evaluation process. For example, it could be as simple as one person at the district, who knows the kid, and is familiar with his file, saying "nope, don't suspect any disability" - and there would be little if any involvement of others, including the parent, in the decision.

When we trained on this we acknowledge that you are in fact "reviewing data" twice, but for different purposes and under different requirements. When you review data to make a decision about a referral, you are correct that there are no requirements on who does the review or exactly what data needs to be reviewed. But the fact remains that in order to make a decision, you have to review some data. In the second case, once you have made a decision to evaluate, then the first step in that process is "review of existing data" and the regulations outline how this process is to be conducted, who is to be involved, etc. Also, in the first case, the decision you are making is whether or not you have reason to suspect a disability and to continue with an evaluation. In the second case, the decision you are making is whether there is enough data to determine eligibility and need for services or if additional data needs to be collected.

3. Our district gives the PLAN test (10th grade) and the ASVAB (11th grade) to high school students on an annual basis; should we mark these as district tests on IEPs?

Answer: Yes, if you are giving this test to all students and not on an individual basis. Your district assessment coordinator is a good source to help determine if an assessment is a "district-wide" assessment. Another resource is the DESE Assessment Section, Division of School Improvement. There are some general guidelines that help determine whether an assessment is a district-wide assessment. Here is some information from South Dakota that we think is very helpful and that we will be including in our own documents in the future:

What is a district-wide assessment?

A district-wide assessment is one that is administered to an entire grade(s) at a district level to measure the achievement of students. Screenings which are administered for making placement decisions are not considered district-wide assessments, unless results are publicly reported. District-wide assessments furnish rich, compelling evidence about the achievement of district goals. Districts may select large-scale assessments (such as Stanford 10, Iowa Test of Basic Skills, or the California Achievement Test) that align with district goals, reflect classroom practice and provide evidence of student learning. District-wide assessment data is often used to gain formative information on student progress, help districts determine areas for school improvement, provide feedback to teachers and parents and report academic progress to the community. All students must participate in the district-wide assessment to gauge the effectiveness of the education system.

Districts which administer district-wide assessments must:

- Include all children with disabilities in all district-wide assessments;
 - Determine allowable accommodations for district assessments and establish guidelines for the use of accommodations;
 - Have available an appropriate alternate assessment for students whose IEPs indicate alternate assessment for state and district-wide assessment;
 - To the extent feasible, use universal design principles in developing and administering any assessments; and
 - If district-wide assessment results are reported publicly, districts must report results for students with disabilities (on both the district assessment and district alternate) with the same frequency and detail as students who do not have disabilities.
4. My question was if the child was due for a three year reevaluation say on 1/20/10, the previous district did not conduct the reevaluation or waiver form, the child moved into our district on 3/1/10, do we have to conduct a reevaluation or can we use the triennial waiver form?
- Answer:** You can do either depending on whether you decide to a reevaluation is needed.
5. If the parent has given written revocation for special education and related services and at a later date the parent or the school sees the need to pursue special education and related services, what is the child find procedure: re-evaluation or initial evaluation?
- Answer:** Initial evaluation.
6. Does the school district have the right to approve or edit parent input before including it in the PLAFFP?
- Answer:** Yes. The parent's input is to be reflected in the Present Level section; however, that does not mean the parent dictates exactly how it reads, or that the parent can provide the language and have it completely incorporated.
7. If the school district doesn't agree with parent input and/or does not include the input, what is their obligation, i.e. is a notice of action required?
- Answer:** No written notice is triggered by a school district's refusal to include the language the parent has requested in the Present Level. The section is to reflect parent input. See SELS message of September 17, 2008, on written notice as well as information on our website under the Compliance button, regarding written notice.
8. What information must be included by the school districts' to fully inform parents at points when their written consent is required? Where would districts find effective practice guidelines to ensure their efficacy in informing parents when written consent is needed?
- Answer:** See state regulations page 60 for the required components of a written notice. Also, see website for information regarding written notice.

9. Can a special education teacher (or a speech pathologist if the delay is in the language area) be an interventionist for RTI if the intervention is done in the general education room . . . perhaps during a period of time where the two teachers are in a co-teaching situation?

Answer: Only if that teacher is providing the regular education interventions to the regular education student during a portion of her time that is paid for with non-IDEA funds.

10. Can a speech implementer provide interventions for a child who has articulation problems, but has not been identified as a student with a sound system disorder?

Answer: Only if that implementer is providing interventions for a child who is non-disabled during a portion of the time that the implementer is paid with non-IDEA funds.

11. When students are eligible for ESY but parents refuse ESY and want student to attend regular education summer school instead, and the IEP team feels that this would be sufficient, how do we document that on the IEP? Do we then mark the student as eligible or as ineligible?

Answer: If the IEP team has determined the child eligible for ESY, and the ESY services can be implemented at the “regular” summer school that is great. But if the parent is uninterested in the ESY services and has opted instead to send the student to the summer school, that decision does not change the fact that the IEP team determined the child eligible for ESY. It just means that the parent has refused ESY services.

12. Could you please let us know exactly when we need to give out the Parents Bill of Rights? When a referral is made, do we need to send the Parents Bill of Rights in addition to the Procedural Safeguards within 5 days? Do we give it when the student qualifies or when we have the first IEP meeting (if the qualification meeting and the first IEP are not the same meeting)?

Answer: The requirement to give out the Parents Bill of Rights is a state requirement based on a Missouri law. This law requires that the document be given to parents any time the IDEA Parents Rights Notice is given (aka procedural safeguards statement). So yes, you do need to give it to parents when you give the procedural safeguards statement out in response to a referral. After the student qualifies for eligibility, you can give it to them at the time of the student’s eligibility determination or at the initial IEP meeting – either is fine.

13. During the last webinar, it was said that one does not need to do a Review of Existing Data/Reevaluation to dismiss a student from related services. My question is, if the student is a speech only student whose services are speech services, do we need to perform a reevaluation with at least a review of existing data prior to dismissing from services?

Answer: Yes; if the student is a “speech only” student, then a reevaluation is required prior to exiting. A reevaluation/reevaluation process is required prior to exiting a student from special education.

14. Several of our staff participated in this year's TOPs training (Transition Outcomes Project). Dr. O'Leary stated that if teams plan to invite an outside agency to the IEP meeting, they need to have the parent sign a release of information so that they can invite the agency representative to the meeting. This is in addition to listing the agency representative on the Notice of Meeting. Is this correct?

Answer: Yes. If the school district is inviting an outside agency to the transition meeting so that the outside agency might be able to provide some services or implement transition plans, parent consent is needed. That consent must be obtained PRIOR to inviting the outside agency. If the parent brings the outside agency person with them as their invitee, no consent is expected.

15. If staff use the Review of Existing Data form, to help guide them in making a decision about whether they suspect a disability (so that they can decide whether to grant or deny a request for evaluation), will that make the RED an evaluation?

Answer: No. Using the model form as sort of a worksheet to help analyze whether to grant an evaluation request, does not transform the referral step into an evaluation.

16. Do you always have to do an evaluation on out-of-state transfers, or can you accept the evaluation if it meets MO criteria? If you don't agree with the diagnosis, but current assessments are available, can you just to a Review of Existing Data, and change the diagnosis. Example: The other state has the student diagnosed ED, because of ADHD. It would be better to classify the student as OHI.

Answer: Please see the detailed procedures for out of state transfers in our Program Review Standards and Indicators document, Standard 550. These provide for you to either accept the out of state evaluation report or reject it. If you are doing another evaluation and have rejected the evaluation report from out of state, it is an initial evaluation. The evaluation process does not necessarily mean additional assessments have to be given.

17. Please explain 200.10 Note (3) "determined in not more than 30 calendar days from the date of referral" in relation to 200.70a which says "date of notice is not more than 30 calendar days from date of referral". How can you have 30 days to conduct a cumulative record review but need to obtain consent for evaluation within 30 days from the date of referral?

Answer: You have 30 days from date of referral to determine if you are moving forward with an evaluation (to determine if you suspect a disability). If you decide to move forward, you will prepare the written notice – but that also needs to be done within that same 30 days. So in other words, you have 30 days from date of referral to decide whether to move forward with an evaluation and to provide written notice that you are going to evaluate. The consent does not need to be obtained by day 30.

18. When considering ED eligibility and the impact of emotional disturbance adversely affecting a child's educational performance, can the impact be on all non-academic areas (not functioning in classroom, extreme behaviors result in lack of relationships and safety concerns, inability to stay in general education classroom, etc.?)

Answer: Yes

19. We have been writing a notice of action for an annual IEP review, we state on the NOA that the Present Level and goals have been updated. Is this necessary if no goals have been added or dropped, and the PLEP was just updated?

Answer: See answer to #7 and #8 above. No written notice is required for merely updating the Present Level of Performance section.

20. If the parent verbally asks us to invite an agency for transition to a meeting, do we need to have the written consent from the parent.

Answer: No.

21. Do you know when the High Needs Funds will be released?

Answer: At this time we anticipate in May.

22. When serving a young child a developmental disability, who needs pre-k skills as part of their IEP- Can a classroom aide be responsible for working on the goals if she is under the supervision of an ECSE teacher or a EC teacher?

Answer: yes, as long as the aide is not providing initial instruction but is reinforcing what was already taught by a certificated teacher.

23. On the special considerations page of the IEP, in the section "Does the student exhibit behaviors...", it says "If a behavior intervention plan is developed it must be part of the IEP". Can a BIP be used without conducting a Functional Behavior Assessment?

Answer: Yes.